

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6749 OF 2003

1. Union Bank of India,)
a Banking Company, incorporated)
and existing under the Banking)
Companies (Acquisition & Transfer)
of Undertakings) Act, 1970 having)
its Head Office at Union Bank)
Bhavan, 239, Vidhan Bhavan,)
Marg, Nariman Point, Mumbai)
400 021 and its Advances Department)
at 66/80, Bombay Samachar Marg,)
Mumbai - 400 023.) Petitioners.

V/s

1. Union of India)
)
2. The Commissioner of Payments)
appointed under Section 17 of the)
Textile Undertakings (Nationalisation)
Act, 1995) having its Office at Core 4,)
NTC Premises, Scope Complex 7,)
Lodha Road, New Delhi.)
)
3. National Textile Corporation Limited)
constituted under the Textile)
Undertakings (Nationalization Act, 1995)
having its Registered Office at NTC)
House, 15, N.M. Marg, Ballard Estate,)
Mumbai 400 038.) Respondents.

Shri Y.S. Jahagirdar, Senior Counsel with Shri C.S. Balsara and Shri.
Sangram Suryawanshi i/b Mulla & Mulla for the Petitioner.

Shri Anil Singh with Shri R.C. Master for Union of India.

CORAM: DR. S. RADHAKRISHNAN &
V. M. KANADE, JJ.

DATE : 7th September, 2006.

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Petitioner is a Bank constituted under the Banking Companies Act, 1970. Petitioner had lent advance money to one Poddar Mills (Process House), which was leased by M/s Poddar Mills Ltd. to Shree Laxmi Traders Limited. The said Poddar Processors was taken over by Respondent No.3 in the year 1983 under the Textile Undertakings (Takeover of Management) Act, 1983 and Respondent No.3 was appointed as additional custodian for the purpose of carrying on the said Undertaking.

2. On 14th October, 1986 the Petitioner instituted a suit for the recovery of an amount of Rs 1,46,97,156.95 alongwith interest against Shree Laxmi Traders Limited and the guarantors viz. M/s Poddar Mills Ltd. Respondent No.3 was also added as defendant to the suit. The case of the Petitioner in the suit was that the Respondent No.1 had guaranteed to repay to the Petitioner an amount of Rs 50 lakhs to be advanced by the Petitioner to NTC by

way of Cash Credit Facility. Accordingly, monies were advanced by the Petitioner and a guarantee was executed by the Respondent No.1 dated 19th June, 1986 in favour of the Petitioner. This guarantee was renewed from time to time.

3. In the meantime, on 18th October, 1983 the Management of the said Poddar Mills was taken over by the Respondent No.1 and an Ordinance was issued on 27th June, 1995 nationalizing the said Poddar Mills with effect from 1st April, 1994 and accordingly all rights, title and interest of the owners of Poddar Mills (Process House) stood transferred to and vested in the Respondent No.1. As per section 8 of the said Act, it was the duty of the Respondent No.1 to pay a sum of Rs 1,91,94,000.00 plus interest to Respondent No.2 within thirty days from the specified date by Respondent No.1 in accordance with section 18 of the said Act and as per section 20 of the said Act, every person having a claim against the owner of the Undertaking was required to prefer such claim before the Respondent No.2 within 30 days from the specified date.

4. It is the case of the Petitioner that the Petitioner, after taking over by the Respondent No.1 of the said Poddar Mills (Process

House), invoked the guarantee for the said amount and called upon the Respondent No.1 to pay the Petitioner, the sums guaranteed by the respondent No.1. In reply to the said letter, the Respondent No.1 informed the Petitioner that the liability set out in Category-I of the Act was protected by the Respondent No.1 and, therefore, the question of extending the said guarantee any further did not arise. Petitioner, thereafter, lodged its claim after the Commissioner was appointed under section 18 of the said Act. However, the Petitioner was informed that the claim should be lodged after the date was specified by the Commissioner under section 20. Thereafter, the Petitioner was continuously in touch with the Respondent No.1 and had sent its statement of claim from time to time. However, the same was returned by the Respondent No.1 and an assurance was given that the Petitioner would be informed about the specified date as declared by the Commissioner under section 20. Petitioner has referred to and relied on the entire correspondence between the Petitioner and the Respondent No.1.

5. It appears that the Notification was issued by the Commissioner who was appointed under section 18 of the said Act on 27th November, 2001 which was declared as a specified date for the

purpose of the provisions of section 20. It is the case of the Petitioner that no such advertisement in respect of the Notification was received by the Petitioner. Petitioner, immediately, on receiving information regarding the Notification, addressed a letter dated 20th July, 2002 to Respondent No.2 lodging the claim of the Petitioner and seeking condonation of delay in submission of the claim.

6. Respondent No.2 by its letter dated 5th August, 2002 informed the Petitioner that the specified date for the purpose of section 20 of the said Act was 1st December, 2001 and that the last date for preferring claims was 31st December, 2001 which was extended to 31st December, 2002 and further expressed its inability to condone the delay in accepting the claim as per the provisions of the said Act.

7. The learned Counsel appearing on behalf of the Petitioner has submitted that the Bank was constantly in touch with the Respondent No.2 after he was appointed pursuant to the provisions of section 18 of the said Act and even before the appointment of the Commissioner, correspondence was made between the Petitioner and the Respondent No.1. He submitted that on two occasions, the claim which was sent by the Petitioner to the respondents was returned back and an

assurance was given that the specified date would be intimated to the Bank. He submitted that the respondents did not inform the Bank about the Notification wherein the specified date was declared as 1st December, 2001 or that the specified date was extended to 31st January, 2002. He submitted that section 20 of the said Act has to be construed to mean that the period of limitation was to be calculated within the period of 30 days from the specified date provided the claim has not been lodged earlier. He submitted that the Commissioner ought to have accepted the claim which was lodged earlier by the Petitioner. The learned Counsel submitted that the Petitioner, in fact, was a Nationalized Bank and, as such, what was at stake was public money and the property of the public institutions, in reality, belongs to the Society in general and it does not belong to any individual or group of individuals in particular. He relied upon the judgment in the case of *State Bank of India Vs. Javed Textiles and Ors*¹. He invited our attention to the correspondence between the Petitioner and the Respondent Nos. 1 and 2.

8. The learned Counsel appearing on behalf of Respondent No.1, on the other hand, submitted that the provisions of the said Act was a

¹ AIR 1986 Bom 246

self-contained Code and, therefore, the provisions of Limitation Act would not apply and, consequently, in the absence of any power which was given to the Commissioner to condone the delay, the Commissioner was not authorized to condone the delay of six months which was caused in filing the claim. He submitted that the interpretation made by the learned Counsel for the Petitioner could not be accepted since the wording of section 20 was plain and unambiguous.

9. We have given our anxious consideration to the submissions made by the learned Counsel for the Petitioner and the respondents. It is an admitted position that the Petitioner had lodged its claim with the Commissioner from time to time and this claim was returned back to the Petitioner solely on the ground that the specified date, as prescribed under section 20, had not been notified. It is an admitted position that the Commissioner had informed the Petitioner that the dues of the Petitioner fell in Category-I and that the Respondent No.2 would inform the Petitioner about the specified date which would be declared by publishing an advertisement in two news-papers.

10. The record shows that for a period of six and half years the

specified date was not notified and advertised in news-papers. During this period, there was voluminous correspondence which is annexed to the Petition wherein letters were addressed by the Petitioner to the Respondent Nos. 1 and 2 in respect of their claim which fact has not been disputed by the Respondents and in this correspondence from time to time the Petitioner had been lodging their claim with the Respondent No.2 and this claim was returned on the specious ground that the specified date as mentioned in section 20 of the said Act has not been notified. The facts of this case, therefore, will have to be taken into consideration in view of the factual background of this case. It appears from the record that nearly after six and half years, the specified date was notified by way of advertisement in two news-papers. However, the Respondent No.2 or his Officers did not intimate this fact about publication of the specified date to the Petitioner and only when in the subsequent correspondence inquiries were made by the Petitioner, they learnt about the specified date which was notified as 1st December, 2001 and later on it was extended to 31st January, 2002.

11. In the face of this correspondence and the admitted position of the receipt of claim by the Respondent No.2 which was made by the

Petitioner, it is not open for the Respondent No.2 to reject the claim on the ground of delay. We do not find any provision in the Act which prohibits the lodging of the claim before the specified date. Section 20 prescribes the limitation as 30 days after the specified date. Admittedly, this period was extended by the Respondent No.2 by another period of 30 days as it was aware that after the Commissioner was appointed as per the provisions of section 18 after a period of six and half years, the specified date has not been notified by the Respondent No.2. The contention of the learned Counsel for the respondents, therefore, cannot be accepted. If the Commissioner had power to extend the specified date on account of delay on their part to notify the specified date, the Commissioner ought to have accepted the claim of the Petitioner which was lodged earlier but was returned by the Commissioner himself. Therefore, under these circumstances, it was not open for the Commissioner to allege delay on the part of the Petitioner in lodging the claim. The facts of this case disclose that the claim, in fact, had been lodged from time to time right from the time the National Textile Corporation had acquired the Poddar Mills and the Petitioner - Bank was continuously writing letters to the Respondent No.1 to 3 about its claim. The impugned order passed by the Commissioner, therefore, is patently bad-in-law and, therefore, it

will have to be quashed and set aside. It has to be remembered that the Petitioner - Bank is a Nationalized Bank and the funds of the Bank are, in reality, the property of the Society in general. In our view, therefore, there was no delay on the part of the Petitioner in lodging the claim with Respondent No.2. Respondent No.2 to consider the claim of the Petitioner on merits and decide it in accordance with law.

12. Writ Petition is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(DR. S. RADHAKRISHNAN, J.)

(V. M. KANADE, J.)